

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KATHRYN FORTUNATO,

Plaintiff,

vs. Case No. 1:15-CV-1940PAG

UNIVERSITY HOSPITALS PHYSICIAN
SERVICES, INC.

Defendant.

Deposition of

KATHRYN FORTUNATO

June 28, 2016
9:00 a.m.

Vorys, Sater, Seymour and Pease
200 Public Square, Suite 1400
Cleveland, Ohio

Grace M. Hilpert-Roach, RPR

1 Q. How long do you think it would be; how
2 many years, more than ten or what range would
3 you put it in?

4 A. Five to ten.

5 Q. Let me ask you today, how is your
6 health today; are you fine?

7 A. Yes.

8 Q. Are you working today?

9 A. No.

10 Q. When's the last time you were working?

11 A. When I left the hospital.

12 Q. When you left University Hospitals; is
13 that right?

14 A. Yes.

15 Q. Are you, I guess, medically able to
16 work today?

17 A. Yes.

18 Q. Has that been the case since you left
19 University Hospitals?

20 A. Yes.

21 Q. Do you have any work restrictions
22 today, meaning if your doctor --

23 MR. PORTER: Go ahead.

24 THE WITNESS: Is that okay?

25 MR. PORTER: Yes.

1 A. No.

2 Q. When was the last time that you had
3 work restrictions, that your doctor would have
4 said, "Ms. Fortunato, you have these
5 restrictions," if ever; do you recall ever?

6 A. No. I don't recall.

7 Q. Let me ask you a little bit about --
8 go into a little bit of the background before
9 we go into University Hospitals. You've
10 obviously filed a lawsuit in this case, and
11 we're in Federal Court now. Have you ever
12 filed any other lawsuits?

13 A. I don't recall.

14 Q. Your complaint mentions that you filed
15 a charge of discrimination; do you know what
16 that is?

17 A. Yes.

18 Q. Have you ever filed a charge, other
19 than the ones at issue in this case?

20 A. No.

21 Q. Have you ever filed for Workers'
22 Compensation at any employer?

23 A. No.

24 Q. Do you know what that is?

25 A. I don't recall.

1 studying them.

2 Q. Like what?

3 A. The Excel. We bought the package.

4 MR. PORTER: One at a time. He talks,
5 you finish. If you could say yes or no rather
6 than "uh-huh," the court reporter would
7 appreciate it.

8 THE WITNESS: Okay.

9 Q. So you were telling me what computer
10 programs you're proficient in now. Which ones,
11 if we were at a job interview, would you tell
12 me?

13 A. Excel.

14 Q. Any others?

15 A. No.

16 Q. Are you proficient today on Excel?

17 A. Somewhat.

18 Q. Somewhat. Okay.

19 If I were to say I need a chart with
20 six categories in the chart and it's going to
21 be 100 different items in those six categories,
22 could you do that?

23 A. I don't know.

24 Q. You don't know?

25 A. No.

1 Q. When you say "somewhat," I guess, what
2 would you tell me you could do on Excel?

3 A. I -- I don't recall. It was all on
4 paper.

5 Q. On paper?

6 A. Yeah.

7 Q. So you haven't actually used Excel?

8 A. No. Not in that degree.

9 Q. Do you have it on your home computer?

10 A. Uh-huh.

11 MR. PORTER: Yes, no?

12 A. Yes.

13 Q. Have you used it at home?

14 A. No. Just -- no.

15 Q. What kind of tool did you purchase or
16 get to become proficient?

17 A. I don't recall.

18 Q. It's like, what, a written book or
19 what is it?

20 A. No. It's a CD.

21 Q. You put it in your computer and --

22 A. Uh-huh.

23 Q. -- and watch?

24 A. Right.

25 Q. Did it take you through Excel?

1 A. Uh-huh.

2 Q. We'll look at your medical records,
3 but how long did you have depression? When do
4 you believe you were first diagnosed with it?

5 A. That would be when I gave Dr. Arafah
6 that letter.

7 Q. Excuse me?

8 A. I gave Dr. Arafah a letter, and I
9 don't remember what the date was on there.

10 Q. Was it with the documents that you
11 produced to us today; is that what you're
12 saying?

13 A. Uh-huh.

14 Q. Okay. I'll put them in so that you
15 can refer to them.

16 A. I don't know what the date was.

17 MR. PORTER: Since you made copies,
18 could we have the originals back?

19 MS. HOLLINGSWORTH: Sure.

20 - - - - -

21 (Thereupon, Defendant's Exhibit 3,

22 Miscellaneous Documents, was marked for
23 purposes of identification.)

24 - - - - -

25 Q. I've handed you what's been marked as

1 Exhibit 3. These are the documents -- I'm
2 going to represent to you -- if you look at 3
3 first, those are the documents that your
4 counsel provided to us this morning.

5 A. Uh-huh.

6 Q. I take it these are some additional
7 documents that you believe are relevant to the
8 case?

9 A. Uh-huh. 2008.

10 Q. Is there a letter in here that --

11 A. Uh-huh.

12 Q. It's the last page?

13 A. Right.

14 Q. You say September 9, 2008 is when you
15 were first diagnosed with it?

16 A. Right.

17 Q. Let me ask you this: When I looked
18 through the medical records -- you understand
19 that we got your relevant medical records in
20 this case?

21 A. Uh-huh.

22 Q. You have to answer yes. I'm sorry.

23 A. Yes.

24 Q. When I looked through those, this
25 letter -- "this" being the one at the back of

1 Exhibit 3 -- is the only letter that I saw that
2 was sent to or given to UH; is that a fair
3 statement?

4 A. Yes.

5 Q. So there's no other time, either prior
6 to or after, where you said, hey, here's a
7 letter from my doctor?

8 A. No.

9 Q. Okay. That's what I --

10 A. I don't recall, but --

11 Q. Okay. Because I had looked through
12 it, and I didn't see anything in the records.
13 But today you don't recall any others?

14 A. No.

15 Q. That document doesn't say that you had
16 any work restrictions. And when I say "that
17 document," the letter from your doctor; it just
18 says you're going to be going in for therapy
19 twice monthly?

20 A. Uh-huh.

21 Q. You just have to answer yes. I'm
22 sorry.

23 A. Yes.

24 Q. Did the doctor ever give you anything
25 in writing to say, "Ms. Fortunato, you have

1 restrictions beyond these two treatments"?

2 A. I don't recall.

3 Q. Okay. Did you have ever any
4 restrictions? Today you don't. Did you ever
5 have any restrictions?

6 A. Today?

7 Q. Today I already asked you; you said
8 no. Did you ever, since that 2008 forward,
9 have any restrictions that you're aware of?

10 A. No.

11 Q. So let's go through then this charge.
12 Let's go back to Exhibit 2. And I just want to
13 ask you about that second paragraph in the
14 particulars. If you could go to page 2, and it
15 says, "I believe that Deb Conti" -- do you see
16 that?

17 A. Yes.

18 Q. And when I read through it, it says --
19 the second sentence says, "Due to my
20 disability, I was not performing at an
21 acceptable level." Let me ask you: Did you
22 agree with Ms. Conti that your work performance
23 was not up to UH's standards?

24 A. No.

25 Q. What did you mean by that sentence? I

1 "Defendant hired a person under the age of 40
2 to replace Plaintiff as doctor's secretary."

3 Who was that; do you know?

4 A. No.

5 Q. Do you know who they hired, if
6 anybody?

7 A. Unh-unh. No. I don't recall.

8 Unh-unh.

9 Q. Do you know if anybody was hired to
10 replace you or the position was just absorbed
11 or anything like that?

12 A. I don't recall. I don't know a thing.

13 Q. Okay. And then if we look at
14 paragraph 16, do you see that one where it's
15 numbered 16?

16 A. Uh-huh.

17 Q. It says that you were required to
18 learn a new computer program, Excel; do you see
19 that?

20 A. Uh-huh.

21 Q. Okay. There were other programs that
22 you were asked to learn and other issues as
23 well at that time, right?

24 A. I don't recall. Just the one.

25 Q. So we'll get into your documents, but

1 you recall that Excel or your inability to use
2 Excel was one of the issues?

3 A. That's right.

4 Q. Let me just ask you, if today you're
5 only somewhat proficient, I assume that you
6 agree, as of the date of your discharge, that
7 you weren't proficient; is that a fair
8 statement, in Excel?

9 THE WITNESS: Am I allowed to speak
10 out?

11 MR. PORTER: Sure. Answer his
12 question.

13 A. The question is -- none of us had any
14 teaching, none of us had any background or
15 given an opportunity to learn it. We were just
16 told you had to learn it. And we should have
17 been sent to a training school, of which we
18 were not sent.

19 Q. Okay.

20 A. And it was all hit and miss, and we
21 were on the computer trying to learn it with
22 phones ringing and people concerned to get the
23 work done and there was no direct classmate --
24 class, you know, organized for us or sending us
25 to schooling the way they should have.

1 situation with Excel, but they hadn't taught
2 you how to do it.

3 Q. Okay.

4 A. So I did the old-fashioned typing
5 type, and they didn't like it.

6 Q. They wanted it in the computer system;
7 is that a fair statement?

8 A. Uh-huh.

9 Q. I assume you agree that at University
10 Hospitals or any hospital one of the most
11 important things is proper maintenance of the
12 medical records?

13 A. Oh --

14 Q. Is that important?

15 A. Oh, yes.

16 Q. You don't disagree that they would
17 want to know where they're at, right?

18 A. Every minute.

19 Q. If a patient or a former patient said,
20 "I want my record," UH wanted to be able to
21 find it?

22 A. That's right.

23 Q. And did it come up that they said that
24 you can't just type it in, you have to use
25 Excel?

1 actually try it or did you always just say no?

2 A. I didn't work with it until I finally
3 was able to do a little bit at home. Unh-unh.

4 Q. While at UH, did you ever actually try
5 Excel; did you ever actually get on and try?

6 A. Yes, I did. They had temporary ones
7 over there, temporary old-fashioned trainings
8 on there, but they didn't have anything that
9 would apply to me.

10 Q. There were some trainings at UH?

11 A. Uh-huh.

12 Q. And you did those?

13 A. They were -- they weren't the kind
14 that we needed. It was just telling you how
15 Excel is built, but nothing that you needed for
16 yourself for what job you were doing.

17 Q. Okay. And my question now is, when
18 you were given the medical records and they
19 said catalog these before sending them out, did
20 you ever try to put them into Excel?

21 A. No.

22 Q. So you always just typed it in?

23 A. Uh-huh.

24 Q. Even though Deb Conti had written you
25 up?

1 A. Uh-huh.

2 Q. Is that right?

3 A. Uh-huh.

4 Q. You have to answer yes.

5 MR. PORTER: You have to say yes.

6 A. Yes.

7 Q. Now, just so I understand how many
8 categories, was this like you would put the
9 patient name?

10 A. Yes, sir.

11 Q. What other information would you put
12 on --

13 A. Record number, date of birth.

14 Q. Anything else?

15 A. Oh, boy. We're going back a long way
16 on that one. Let's see. The name, record
17 number, date of birth, and -- oh, the number on
18 the box. So we knew where it find it, the
19 number on the box.

20 Q. You would have like a four-column
21 lengthy list?

22 A. Uh-huh.

23 Q. Is that fair?

24 A. That's right.

25 Q. And did you ever go to one of the

1 Q. You were on a computer?

2 A. Word.

3 Q. You went on to Word?

4 A. You labeled everything and then you
5 saved it and then got it up the next day and --

6 Q. You put it on Word, but you didn't put
7 it into Excel?

8 A. No.

9 Q. Okay. Was there anything else that
10 you were asked to do at UH that you couldn't
11 do? This one talks about you needed adequate
12 training. We're back to paragraph 16. I just
13 want to know at this point if you can recall
14 anything else that UH said to you, "Ms.
15 Fortunato, we need you to do X," and you
16 couldn't do it because you didn't have enough
17 training; was it just Excel or was there
18 anything else?

19 A. Telephone.

20 Q. Telephone? Okay.

21 Anything else before I ask you about
22 telephone?

23 A. Well, we were doing prescriptions, and
24 I learned that from the nurse in one hour.

25 Q. I'm just asking you -- right now I'm

1 again and again. They got mad, because they
2 said, "This is supposed to be confidential."
3 She was running her own set plus the office
4 set. In the meantime, messages are building
5 up, and Dr. Arafah is catching the devil
6 because he's not returning his phone calls.
7 Why? Because she had done this. And I thought
8 to myself -- I never complained; I never said a
9 word. That was -- that's not the way you're
10 supposed to run things.

11 Q. But my question was, was there
12 anything on the phone that you couldn't do?
13 This one sounds like Carol just kind of made it
14 difficult. Was there anything that you didn't
15 know how to do?

16 A. No. We knew how to run the phones.

17 Q. You knew how to use --

18 A. Yeah. It was just neglect going on.

19 Q. As we sit here today, the only thing
20 that you were asked to do as a medical
21 secretary that you couldn't do was Excel?

22 A. Excel, yes.

23 Q. Everything else you were able to learn
24 one way or the other?

25 A. Uh-huh.

1 Q. As to the phone, I take it that even
2 though Carol wasn't giving you the password,
3 you didn't tell your supervisors that, "Hey,
4 Carol is making my life difficult"?

5 A. You had to be careful what you were
6 saying; you got yelled at for it.

7 Q. Carol would get mad at you?

8 A. So would Deb Conti.

9 Q. Deb would get mad if you said that
10 "Carol is not letting me get messages"? You
11 think she would be okay with you not being able
12 to get messages and leaving customers at risk?

13 A. She would just make smart -- difficult
14 comments.

15 Q. So there were customers who were
16 calling in, patients calling in, and they might
17 not have gotten a follow up because you
18 couldn't get the messages?

19 A. Uh-huh.

20 Q. Is that right?

21 A. That's right.

22 Q. I assume that when you said the doctor
23 was taking heat, the whole department was
24 probably like, what's going on?

25 A. They were getting a little mad because

1 they weren't getting returned calls. "Why
2 didn't you take care of this?" Why didn't you
3 do this, that, and other?

4 Q. Did you think to raise your hand and
5 say Carol was doing it?

6 A. No.

7 Q. No?

8 A. No.

9 Q. Okay.

10 A. She's a bully.

11 Q. She's a bully. Okay.

12 Let's look at the next page of the
13 complaint, page 4. If you would turn the page
14 to page 4, I just want to ask you, if we look
15 at paragraph 25, it says, "Plaintiff requested
16 Defendant make reasonable accommodations." I'm
17 going to represent to you Plaintiff is you and
18 Defendant is University Hospitals Health
19 Systems, Inc. I think it's changed around
20 today, but it's UH, your former employer. What
21 accommodations do you recall asking for?

22 A. I have to think what they're talking
23 about. Probably throwing a great deal of work
24 on me. I wound up doing half of her work all
25 the time.

1 Q. Carol's work?

2 A. Yes.

3 Q. Is there anything else that you can
4 recall? Is there anything that you went to Deb
5 Conti about and said -- I take it you went to
6 Deb and said you needed training in Excel,
7 right?

8 A. It didn't work. She was rude. It was
9 a waste of time.

10 Q. My question is, did you ever go to any
11 supervisor and say, hey, I need certain things
12 for my job or did you just try to do it the
13 best you could?

14 A. Uh-huh.

15 Q. Just did the best you could?

16 A. Yeah.

17 Q. You didn't go and ask for them to give
18 you help or anything like that?

19 A. Unh-unh. Never. I would go to
20 Dr. Arafah.

21 Q. What did you talk to Dr. Arafah about?

22 A. Tell him what's going on. He would
23 say, "Okay. I'll check into it."

24 Q. Did you ever ask Dr. Arafah for any
25 specific changes to your job or anything like

1 that?

2 A. No.

3 Q. When did Dr. Arafah leave; was he
4 there when you were let go?

5 A. As far as I know. I don't know.

6 Q. You don't know?

7 A. No. I don't know.

8 Q. Let's just go through some of the
9 basic documents from your employment.

10 - - - - -

11 (Thereupon, Defendant's Exhibit 4,
12 Application for Employment, was marked
13 for purposes of identification.)

14 - - - - -

15 Q. Do you recognize Exhibit 4 as your
16 employment application?

17 MR. PORTER: Take your time,
18 Ms. Fortunato.

19 A. This is something about radiology.
20 Oh, these are old.

21 Q. If you look at the last page, is that
22 your signature on that last page?

23 A. Uh-huh.

24 Q. You have to answer yes. I'm sorry.

25 A. Yes.

1 Q. And when you were hired, you were 55
2 years old?

3 A. Okay.

4 Q. Okay. They hire you; you're over 40,
5 right?

6 A. Uh-huh.

7 Q. And did anybody ever -- let me ask you
8 just in general, did anybody ever make any
9 age-based comments to you, anything negative
10 about your age?

11 A. I don't recall.

12 Q. Obviously, if somebody would have
13 said, "Hey, we don't like old people here," you
14 would recall that --

15 A. No.

16 Q. -- right?

17 So let me show you some of the
18 policies from your employment.

19 - - - - -

20 (Thereupon, Defendant's Exhibit 5,
21 Corporate Code of Conduct, was marked for
22 purposes of identification.)

23 - - - - -

24 Q. These are just some of the
25 acknowledgements that you signed off on during

1 lacking far beyond Excel?

2 A. She did in the beginning, and in the
3 end she told me how fabulous I was doing and
4 then fired me.

5 Q. If you look at the last page of that
6 Exhibit 11, it says, "Kathryn has shown minimal
7 improvement on her performance improvement
8 plan." Do you see that?

9 A. No. Which one is that?

10 Q. The last page of Exhibit 11. If you
11 turn to the last page.

12 A. Okay. Thank you.

13 Q. Do you see that first sentence,
14 "minimal improvement"?

15 A. Uh-huh.

16 Q. You have to answer yes.

17 A. Yes.

18 Q. And then it says, "There continues to
19 be significant performance concerns," and it
20 goes through patient scheduling errors; did you
21 ever have those?

22 A. Very few.

23 Q. "Including incorrect patient/physician
24 or location," did you ever have those?

25 A. Very few.

1 Q. You had them, but it's just not that
2 many?

3 A. Not that many. Unh-unh.

4 Q. "Delay in responding to patient
5 needs," did that ever happen?

6 A. No.

7 Q. And then it says, "In the role of a
8 doctor's secretary, it's imperative to have
9 strong communication and collaboration skills."
10 Did you agree with that?

11 A. I don't know what that meant.

12 Q. You don't know that you would have to
13 communicate well with your patients?

14 A. Oh, sure. Yeah. Yeah.

15 Q. You would have to work with Carol and
16 others to be able to service them, right?

17 A. Yes.

18 Q. And it says, "Kathryn has continued to
19 not meet expectations in these critical skills
20 for the role." Do you see that?

21 A. Yes.

22 Q. And then it says, "Throughout the PIP,
23 she has not appropriately responded to meeting
24 requests and patient messages continue to be
25 unclear or incorrect." Did you have issues

1 with attending the meetings that were scheduled
2 with Deb and HR about your PIP?

3 A. There were no meetings.

4 Q. Did they send you calendar invites and
5 you failed to attend?

6 A. Nope. There was one I didn't -- I
7 didn't know anything about.

8 Q. One that you didn't know anything
9 about?

10 A. I didn't answer to one, yes.

11 Q. Did you go to the meeting?

12 A. I went to everything that I was asked
13 to go to, yes.

14 Q. So there were meetings with HR and
15 with Deb?

16 A. No. Just her. And she brought down
17 the other girl, that Williams girl.

18 Q. She's in human resources?

19 A. Yeah. Uh-huh.

20 Q. They would meet with you and review
21 your performance before your discharge?

22 A. They would meet with me, but nothing
23 was ever -- nothing was ever worked out.

24 Q. Nothing was ever --

25 A. It was all negativity, and you're a

1 bad girl and this, that, and the other. And
2 that's when I tried to tell them that I was on
3 a medication and to please be patient with me.
4 And that's when they sent me to Springer, and
5 she said the same thing and then Conti went
6 ahead and did what she chose to do.

7 Q. Who's Springer?

8 A. She's a counselor --

9 Q. Okay.

10 A. -- for UH. And if you're having any
11 kind of problems, you're supposed to go to this
12 lady. And I did. And I walked in there, and I
13 told her that I had just gotten reamed. I
14 don't even know what it was for. It had me a
15 little bit on the nervous jittery side, and she
16 said she's known for being that way.

17 Q. Okay. So let's look at the second
18 page of that document. I just want to ask you
19 about a couple things. You did write, "The
20 enclosed reasons for termination are not true
21 or realistic."

22 A. They weren't.

23 Q. Did you write that; is this your
24 handwriting?

25 A. Yes.

1 Q. And you gave three reasons why you
2 think you were terminated, right?
3 A. Yes.

4 Q. So let's just go through. "A recent
5 deposition for a co-worker," what's that all
6 about?

7 A. That was Marcia's. She really -- she
8 really gave it to her. She had a horrible time
9 there.

10 Q. What did your deposition -- what came
11 out of it?

12 A. Hers or mine?

13 Q. Yours. You say "a recent deposition."
14 What do you mean by it? You say, "A recent
15 deposition for a co-worker," what do you mean
16 by that?

17 A. I had to go to Marcia's deposition.

18 Q. You went to Marcia's?

19 A. Uh-huh.

20 Q. What was said that you thought
21 impacted your employment?

22 A. It was threatened.

23 Q. You were threatened?

24 A. Very much so.

25 Q. At the deposition?

1 A. I wouldn't even know how to answer
2 that.

3 Q. Okay. And then --

4 A. Yeah.

5 Q. The final thing it says, "My age of 67
6 that should not be considered." Do you see
7 that number 3?

8 A. Yeah.

9 Q. Why do you think your age was
10 considered?

11 A. Because they can get a younger girl in
12 there and do twice the work.

13 Q. But you don't know if anybody was
14 brought in?

15 A. No. I know they had a couple girls
16 coming through the door, and they looked like
17 they were prospects to be interviewed, but I
18 never questioned it. You don't question
19 everybody that comes in the door.

20 Q. Aside from seeing some younger women
21 coming through the door, you don't know if they
22 were there for job interviews or what, right?

23 A. Never asked.

24 Q. And when did they come through the
25 door?

1 A. Shortly before I got fired.

2 Q. Shortly before?

3 A. Yes. Like a week or two. And you
4 come in with a suit and you're all dressed up,
5 and you know you're not there to sell drugs,
6 you know what I mean, drug reps, so --

7 Q. So you didn't -- you assumed they
8 weren't there to sell pharmaceuticals to the
9 doctors, but they might have been there to
10 interview for some job?

11 A. I think so, yeah.

12 Q. You think so?

13 A. Uh-huh.

14 Q. Did you ask anybody?

15 A. Nope.

16 Q. Is there anything else that made you
17 think that your age was considered?

18 A. Yeah. I heard people talking, and
19 they were saying that when you got to a certain
20 age, they were going to let them go. It was in
21 the hallway; one of the supervisors were
22 talking. And it was kind of chaos in the
23 hospital that if you were a certain age, you
24 were on your way out.

25 Q. When and who said this? Did you even

1 A. Uh-huh. Yes, sir.

2 Q. Is she still there?

3 A. Well, I saw her about a month ago
4 getting on an elevator, and I think she still
5 is there, but I don't speak to her.

6 Q. You think she's probably close to 60
7 now?

8 A. She's a year younger than me.

9 Q. How old would she be today?

10 MR. PORTER: Objection. Go ahead.

11 A. 67, I guess. 66, 67, something like
12 that.

13 Q. I thought when we went through
14 initially you said she was in her 50s.

15 A. No, no, no. She's older than that.

16 Q. So they didn't discharge her?

17 A. Not that I know of. I'm not allowed
18 to talk to those people, so I never -- I'm
19 supposed to keep to myself.

20 Q. When you left, Ms. Campbell was still
21 there?

22 A. As far as I know. Uh-huh.

23 Q. Toni was in the department, and Toni
24 was, you thought, what age?

25 A. Toni was in her 40s.

1 Q. Okay.

2 A. Somebody just has strange ideas in
3 their mind, I guess.

4 Q. Let me just ask you, we went through
5 -- obviously, there was lots of things that
6 happened in your employment, and I've tried to
7 focus us on the documents that the hospital
8 believes led to your ultimate discharge.

9 A. Uh-huh.

10 Q. Just so I understand, as to the
11 performance issue, I think you said at one
12 point that -- you have said that you couldn't
13 do Excel. I'm not saying that you believe you
14 should have gotten training, but you admit that
15 you couldn't do that?

16 A. No. Not well enough.

17 Q. You believe that you could do
18 everything else that was asked, right?

19 A. Yes.

20 Q. You said at one point that it may have
21 appeared that you had made mistakes because of
22 Carol Campbell; is that an accurate statement?

23 A. Yes.

24 Q. And I think you said that if somebody
25 came to you and said, hey, this mistake was

1 made, that you wouldn't speak up and say Carol
2 Campbell caused it; is that fair?

3 A. Uh-huh.

4 Q. So I guess with that, let me just ask
5 you, I know that you disagree -- you don't
6 agree with all of the performance issues Ms.
7 Conti laid out, right?

8 A. No.

9 Q. Are some of them accurate based on
10 what Carol Campbell was doing?

11 MR. PORTER: Objection. Go ahead.

12 A. I don't recall, really.

13 Q. Were there some patient issues?

14 A. There were some patient issues I went
15 ahead and straightened out for her.

16 Q. Did the doctors or Ms. Conti believe
17 that some patient issues were caused by you?

18 MR. PORTER: Objection. That's a
19 question for them. Go ahead.

20 A. No.

21 Q. No?

22 A. No.

23 Q. Did they believe that some of your
24 communications might not have been up to par?

25 MR. PORTER: Same objection.

1 A. No.

2 Q. You do agree that, I guess at least
3 over the last year of your employment, Ms.
4 Conti was giving you some specific performance
5 issues that she believed you needed to improve
6 upon, right?

7 A. Just that one.

8 Q. I think we went through --

9 A. That was it.

10 Q. I'm happy to go back through them, but
11 you got two performance improvement plans,
12 right?

13 A. Right.

14 Q. And then you guys met a number of
15 times, right?

16 A. Right.

17 Q. And HR came down, right?

18 A. Yeah. But during those times, I tried
19 to tell them that I was on medication for
20 depression, please stop screaming and yelling
21 at me, please stop throwing things at the
22 table. They just kept right on going, and he
23 said, "That's your problem, not mine."

24 Q. I guess you're saying that they were
25 really upset because they believed your

1 performance was really bad?

2 A. No.

3 Q. What would cause the arguments?

4 A. They were trying to get rid of me.

5 It's that simple. They were trying to dump me.

6 They were -- what's the word for it? --

7 indifferent, difficult.

8 Q. What was the yelling about in the
9 meetings; what do you recall?

10 A. Well, you should have known better and
11 this, that, and the other. I tried to tell
12 them I hadn't even done anything wrong, and
13 they just continued to --

14 Q. I think you said they were negative.

15 Obviously, I mean, you do agree that there are
16 times when if an employee --

17 A. Sometimes everybody makes a mistake.

18 Q. And, obviously, those times may have
19 to be negative, right?

20 A. Right.

21 Q. If I missed an appointment, if I'm
22 late somewhere, my client might say, "Dave, you
23 should have been on time," and that might be
24 negative --

25 A. Uh-huh.

1 at you two and you two are getting disciplined?

2 A. Disciplined, right.

3 Q. I think your documents say that you
4 didn't keep any notes during your employment,
5 like a journal or anything like that?

6 A. I probably did here and there, but I
7 was afraid to have them out because I didn't
8 know -- she would go through all our paperwork
9 and snoop around at everything we had.

10 Q. Who, Carol?

11 A. Yeah. Carol did it. Uh-huh. We were
12 afraid to take a day off because she would go
13 through all the stacks of paperwork, and she
14 would keep them. So with that, we had to be
15 very cautious. I never left her any messages.

16 Q. Today do you have any notes from your
17 employment, a journal or anything like that?

18 A. I don't think so.

19 Q. Okay. You said that there was that
20 conversation in the hallway that you overheard
21 somebody --

22 A. I did.

23 Q. You never heard any other age comments
24 during your employment?

25 A. No. Just that one. Yeah.

1 MR. CAMPBELL: Okay. Let's take a
2 short break. I'm going to confer with my
3 colleagues. I think we're almost done.

4 THE WITNESS: Okay.

5 MR. CAMPBELL: We'll be back here
6 momentarily.

7 (Recess had.)

11 MR. PORTER: I do have a few follow up
12 for redirect.

13 EXAMINATION OF KATHRYN FORTUNATO

14 BY MR. PORTER:

15 Q. You mentioned a person by the name of
16 Bixenstine; do you recall that?

17 A. Yes.

18 Q. Who is this Bixenstine person?

19 A. He's an attorney, and he was on
20 Marcia's case, the African American girl that
21 was terminated.

22 Q. And how did you know him?

23 A. Because he called us all in and talked
24 with us and asked us to explain some of the
25 things that they were giving Marcia a hard time

1 about, to verify things, et cetera and et
2 cetera. And when she was terminated, he had --
3 he came to each one of us and we talked to him
4 and he explained the things that were happening
5 in the department. And when they started on
6 me, I called him, I called him at home because
7 I was so desperate to get help. And he said,
8 "That doesn't surprise me because I knew you
9 would be next."

10 Q. When did this conversation take place?

11 A. Right after Marcia got -- she got
12 fired.

13 Q. What year was that?

14 A. A couple years ago.

15 Q. That would have been shortly before
16 you were fired?

17 A. Right. Uh-huh.

18 Q. He said that specifically you were
19 next?

20 A. Yeah. He said, that doesn't surprise
21 me at all, you're next, but I can't help you
22 for whatever reasons. And you need to call
23 Marcie Munson or Manson, Marcie over at the
24 hospital and let her know that you're being
25 harassed beyond words. Well, I did, but

1 nothing ever came out of it.

2 Q. What was Marcie Munson's role at UH?

3 A. She was an attorney.

4 Q. Did you hear back from her?

5 A. Never. Unh-unh.

6 Q. And with regard to Plaintiff's Exhibit
7 9, if you could bring that in front of you.

8 I'm not sure where it is in the pile. There it
9 is.

10 A. Okay.

11 Q. If you go to page 3, do you recognize
12 -- next page, ma'am. Do you recognize the
13 handwriting at the top?

14 A. Yes.

15 Q. Whose is it?

16 A. Mine.

17 Q. And did you write this on or about
18 December 5th, 2013?

19 A. Yes.

20 Q. And you made a reference there about a
21 medical issue; do you see that, ma'am?

22 A. "Any prior dissatisfaction could have
23 been related to the fact that I had a medical
24 issue, not aware of until noted by" -- that's
25 right. They wouldn't honor it until I went to

1 PIP -- I mean, until I went to Springer, that
2 lady, Springer, and she told me that I should
3 take time off until the Lithium started to work
4 in my system. I said that I'm afraid I would
5 get fired if I left, and she said, no, they
6 wouldn't, and I got fired anyway.

7 Q. And so when you were asked whether you
8 had informed UH about your medical issue, you
9 had mentioned 2008 and shortly before you were
10 fired?

11 A. Right.

12 Q. And does this refresh your
13 recollection as to when you told UH about your
14 medical issue?

15 A. I told them every time she called me
16 in the room, every single time she called me in
17 there I told her the doctor's name and what was
18 being done for me, and she said, "That's your
19 problem, not mine."

20 Q. You were asked to testify about the
21 PIP that you were placed on. That's
22 Plaintiff's Exhibit 10. Would you locate that,
23 ma'am?

24 A. It's not that one.

25 Q. This is it, ma'am, Plaintiff's Exhibit

1 A. A little bit here and there, but I
2 don't do it as often being at home.

3 Q. Have you found, during your job
4 search, whether or not employers want you to
5 know Excel?

6 A. They like you to know it. Uh-huh. My
7 sister-in-law gave me one, too. She worked for
8 Jones Day for years, and she had one.

9 Q. Do you think you could master Excel
10 with the proper training?

11 A. Yeah, I would.

12 MR. PORTER: I have nothing further.

13 Thank you.

14 FURTHER EXAMINATION OF KATHRYN FORTUNATO
15 BY MR. CAMPBELL:

16 Q. I just want to follow up on one thing.
17 You say that you called at some point, I guess,
18 after the deposition, you say you called
19 Mr. Bixenstine?

20 MR. PORTER: Yes or no, ma'am?

21 A. No.

22 Q. You did not?

23 A. I did contact him, uh-huh. Before I
24 got fired, yeah.

25 Q. You said you called him at home?

1 A. I got ahold of him at home, yeah.

2 Q. You had his home number; how did you
3 call him?

4 A. I think I looked and I found a number
5 and I called it. And they told me, here's the
6 number you call during the day, and I said I
7 didn't know how to get ahold of him. He said,
8 "You're really worried, aren't you?" "Yeah."

9 Q. Why don't you tell me everything that
10 you recall from the conversation when you
11 phoned him. First of all, how long was the
12 conversation?

13 A. Five, ten minutes. It was quick.
14 Told me what to do, how to try and --

15 Q. I want to know everything that you can
16 recall, like when you called, go through and
17 tell me each of the topics that you guys
18 addressed and everything that you can recall.

19 A. Told him what was going on. I'm being
20 harassed, I was worried, what to do, what not
21 to do. And he told me that I needed to go see
22 human resources, which was the first mistake.

23 Q. Okay.

24 A. And what else did he tell me to do?
25 He said it didn't surprise him that I was being

1 -- I was the next one on the list. Go to human
2 -- oh, and then to call Marcie Manson and talk
3 to her and let her know where you're coming
4 from, this, that, and the other. And I did. I
5 got ahold of her. And that's what Carol got --
6 she was starting to watch what I was doing, and
7 she knew that I had called human resources,
8 because they may have called back and she
9 picked up the line. And that's when it really
10 started.

11 Q. Okay. So we had already talked about
12 this conversation; it was after the deposition
13 when Bart told you to go to HR?

14 A. Yes.

15 Q. You said that Carol found out?

16 A. Uh-huh.

17 Q. And she tried to set you up to look
18 like you failed to meet expectations?

19 A. Uh-huh.

20 Q. Is that right?

21 A. Yes.

22 Q. This was, I take it, what, a couple
23 months or six months before your discharge or
24 how long?

25 A. Yeah.

EEOC FORM 131 (11/09)

U.S. Equal Employment Opportunity Commission

Ms. Heather Harmon
 Human Resources Manager
 3605 WARRENSVILLE CENTER ROAD
 Shaker Heights, OH 44122

RECEIVED
 3-13-15

PERSON FILING CHARGE

Kathryn Fortunate

THIS PERSON (check one or both)

 Claims To Be Aggrieved Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

532-2015-00360

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

Title VII of the Civil Rights Act (Title VII) The Equal Pay Act (EPA) The Americans with Disabilities Act (ADA)

The Age Discrimination in Employment Act (ADEA) The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

- No action is required by you at this time.
- Please call the EEOC Representative listed below concerning the further handling of this charge.
- Please provide by **13-APR-15** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
- Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
- EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **25-MAR-15**
 to **Deanna R. Jackson, ADR Staff Mediator, at (216) 522-7415**
 If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Leona J. Smith,
 Acting Intake Supervisor

EEOC Representative

Telephone **(216) 522-7515**

Cleveland Field Office
 EEOC, AJC Fed Bldg
 1240 E 9th St, Ste 3001
 Cleveland, OH 44199
 Fax: (216) 522-7395

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

Race Color Sex Religion National Origin Age Disability Retaliation Genetic Information Other

See enclosed copy of charge of discrimination.

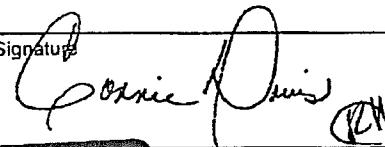
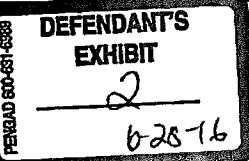
Date

Name / Title of Authorized Official

March 11, 2015

Connie Davis,
 Supervisory Investigator

Signature

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC Agency(ies) Charge No(s): AMENDED 532-2015-00360	
Ohio Civil Rights Commission <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) Ms. Kathryn Fortunate		Home Phone (Incl. Area Code) (216) 249-7228 Date of Birth Redacted	
Street Address 15620 Holliday Avenue, Cleveland, OH 44110		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name UNIVERSITY HOSPITALS HEALTH SYSTEM		No. Employees, Members 500 or More	Phone No. (Include Area Code) (216) 844-3144
Street Address 11100 Euclid Ave, Cleveland, OH 44106		City, State and ZIP Code	
Name <i>FEB 19 2015</i>		No Employees, Members	Phone No. (Include Area Code)
Street Address <i>FEB 19 2015</i>		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).)			DATE(S) DISCRIMINATION TOOK PLACE Earliest 10-29-2014 Latest 10-29-2014
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)			<input type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): <p>In March of 2003 I was hired by the Respondent as a Secretary. On October 29, 2014 I was discharged. I have a disability.</p> <p>I believe that Deb Conti (Supervisor) discriminated against me when I asked to perform duties that I had not been trained on. Due to my disability I was not performing at an acceptable level. I was placed on a PIP in 2013. In October of 2014 I advised my supervisor that I had a disability.</p> <p>I believe that I was discharged due to my disability in violation of Title I of the Americans with Disabilities Act of 1990 as amended ADA. I believe that I was discriminated against because of my age (67) in violation of the Age Discrimination in Employment Act of 1967 as amended.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT <i>Kathryn Fortunate</i>	
<i>2-9-15</i>		SUBSCRIBED AND SWEORN TO BEFORE ME THIS DATE (month, day, year)	
Date Charging Party Signature	532-2015-00360		

UH
Email: Jennifer.levin@uhhospitals.org

University Hospitals Medical Group, Inc.

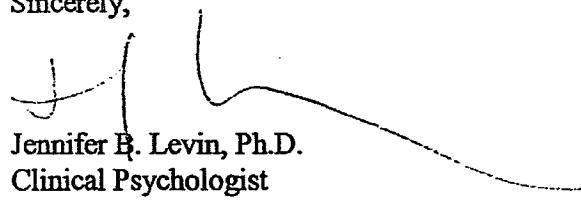
September 9, 2008

Baha Arafah, M.D.
Dept. of Endocrinology
Lakeside, 8th Floor
11100 Euclid Ave.
Cleveland, Ohio 44106

Dear Dr. Arafah,

This letter is to confirm that Ms. Kathryn Fortunato is under my care for the treatment of an anxiety disorder. She will be undergoing cognitive behavior therapy twice monthly.

Sincerely,


Jennifer B. Levin, Ph.D.
Clinical Psychologist



Performance Improvement Plan

Date:	December 3, 2013	To:	Kathryn Fortunato		
From:	Deb Conti	Cc:			
<input checked="" type="checkbox"/> Initial PFP	<input type="checkbox"/> 15 day follow-up	<input type="checkbox"/> 30 day follow-up	<input type="checkbox"/> 45 day follow-up	<input type="checkbox"/> 60 day follow-up	

The following Performance Improvement Plan was prepared as a follow-up to recent discussions we had relating to your performance. The specific areas for improvement are listed below, along with my expectations for when I need to see improvement to occur. While I expect to see immediate improvement, I want you to know what I want to see is consistent improvement in the areas set forth below. Therefore, together we will review your performance against these areas formally on a regular basis over the next sixty days.

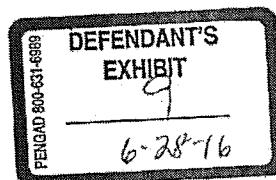
Issue #1 Effective Communication Skills

As a Doctor's Secretary at University Hospitals you are expected to have good communication skills and utilize those skills to support your physician and co-workers. Effective communication will aid you in building trust between you and the providers you support, as well as, your co-workers.. The following are some examples of problems in this area:

- *Emails without subject lines.*
- *Not using the proper greeting when answering the phone.*
- *Incomplete written communication.*
- *Using internal references like "bumped" or cancelled" when speaking with patients.*

Expectations going forward:

- All emails should contain a subject line which references the topic in the body of the email.
- The proper greeting should be used when answering the phone: "Division of Endocrinology, this is Kathryn, how may I help you?"
- Any notes, messages or emails should contain information on to whom the message is addressed, the date the message was taken, proper spelling of the patient's name, the patient's date of birth, MRN, and phone numbers. The message should include all pertinent details and be signed and dated by the doctor's secretary.
- When speaking with patients, your communication should be understanding, empathetic, and helpful. For example, if a patient is on workflow dashboard to be rescheduled, your communication should be: "Hi, (patient name), this is Kathryn from (Dr. Name) office, I'm calling regarding your appointment on (date). Due to a scheduling conflict, we need to reschedule your appointment to a time when we can provide the best patient care" Then offer the patient available slots.



Issue #2 Effective use of Athena

As a doctor's secretary you are expected to use Athena according to your training, as well as, schedule appointments within the provider's templates. The following are some examples of problems in this area:

- *Creating a slot when scheduling patients.*
- *Not scheduling in the correct location for the provider.*
- *Scheduling appointment for less than the provider's required appointment time.*

Expectations going forward:

- Schedule patient appointments in the available slots only., without creating a slot.
- Verify that you are in the proper location in Athena before scheduling a patient.
- Schedule appointments according to the requirements of the provider. For example, 20 minutes for follow ups and 40 minute new appointments for Dr. Sood.
- End the call with the patient by repeating the name of the provider and the date and location of the scheduled appointment.

HAVE NOT CREATED
ANY SLOTS while
working on Residency

Issue #3 Effective use of UHCare Ambulatory

As a doctor's secretary, you are expected to use UHCare Ambulatory according to your training, as well as, according to the requests of your providers. The following are some examples of problems in this area:

- *Not entering messages into call processing.*
- *Not entering prescriptions into UHCare Ambulatory.*

Expectations going forward:

- All messages must be entered in to the call processing function of UHCare Ambulatory.
- All prescription requests must be entered into UHCare Ambulatory.
- Any information your provider requests to be scanned into UHCare Ambulatory, must be scanned.

Issue #4 Acceptance of a diverse workforce

As an employee of University Hospitals, you are expected to accept and respect the diverse cultures, races, ethnicities, etc of our workforce. The following are some examples of problems in this area:

- *References to the work performance of your African American co-workers as "you know how they are"*
- *Referring to someone's race as the reason for poor work performance.*

Expectations going forward:

- All references to co-workers should be professional and focus on performance, not race, ethnicity, etc.
*I DO NOT FOCUS THIS WAY
TRY TO BE PROFESSIONAL
AS POSSIBLE*

Issue #5 Working according to manager's instructions

As an employee of University Hospitals, you are expected to work according to your scheduled hours and effectively perform the duties assigned by your manager. The following are some examples of problems in this area:

- *Not transferring phones to co-workers as instructed.*
- *Not pulling charts for co-workers.*

*I DO TRANSFER PHONE OR PULL CHARTS
AS REQUESTED*

Any prior dissatisfaction could have been
related to the fact I had a medical
issue not aware of until noted by Rep & treated as
if patient.
• Not preparing charts as instructed.

Expectations going forward:

- Work hours scheduled by manager.
- Perform duties as assigned..

Your future success resides in your ability to improve your performance in these key areas. I am hopeful that you will take the necessary steps to improve your performance. You will need to take the appropriate actions to work on the areas above and take advantage of the hospital resources. I am also available to assist in your development.

Next Steps:

- First follow-up meeting (15 days from the date of the PIP)
- Second follow-up meeting (30 days from the date of the PIP)
- Third follow-up meeting (45 days from the date of the PIP)
- Fourth follow-up meeting (60 days from the date of the PIP)

This Performance Improvement Plan is intended to allow you a reasonable amount of time to correct the performance issues noted in this document. Not meeting the expectation set forth in this Performance Improvement Plan can result in your immediate discharge.

Employee Acknowledgement and Receipt of this Document:

Kathryn Foster
Employee Signature

Date

Deborah Conti
Manager Signature

12/5/13
Date